

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 30806137DI
)	
ISAAC REDDING,)	
)	
Defendant.)	

Submitted: August 27, 2010
Decided: September 22, 2010

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED.**

Richard Andrews, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Isaac Redding, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 22nd day of September 2010, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. In September 1989, a Superior Court jury found Defendant guilty of four counts of first degree unlawful sexual intercourse, two counts of first degree burglary and one count of third degree unlawful sexual penetration. Defendant was sentenced to four consecutive life terms with a mandatory term of incarceration of 20 years and three suspended five-year terms.

2. Defendant's convictions, as recounted by the Delaware Supreme Court¹, stemmed from an incident in May 1998 and a second incident in September 1988, both perpetrated against the same victim. In May 1998, an intruder forced his way into the victim's apartment building and raped her. After the attack, the assailant warned the victim not to contact the police and then left the apartment. The victim immediately went to her bathroom to clean herself up. In that process, she threw away the underwear she had been wearing. Later that morning, the victim went to the police station. Because the rape took place in dim lighting, the victim was unable to describe her assailant beyond noting that he had a scar across his face.

3. Approximately three months later, a man again forced his way into the victim's apartment. The victim managed to call for help through an open window. The intruder identified himself as the assailant from the previous assault by telling her that he would "fuck [her] like he did the first time."²

4. Eric Lloyd was passing by the victim's apartment and happened to hear her scream. He called the police and remained on the scene. The intruder had forced the

¹ *Redding v. State*, 831 A.2d 858, 862-863 (Del. 2003).

² *Id.*

victim to perform various sexual acts, and was attempting vaginal intercourse when the police burst through the back door of the victim's apartment. The intruder ran out through the front door, but the responding officers gave chase and captured the fleeing man, later identified as Isaac Redding, on the street outside.³

5. One of the pursuing officers, Officer Strawbridge, testified that he never lost sight of Redding from the time he first saw Redding in the victim's apartment to the time he apprehended Redding outside the building. In addition, the passerby, who was watching from the street, testified that he saw a man run out the front door of the victim's building, and then saw a police officer follow and apprehend him. The victim also identified Redding, when shown photographs shortly after the second attack. She stated that the person she identified from the photograph was the same person who had attacked her in May.⁴

6. At trial, Redding testified that he had known the victim's husband for approximately fifteen years, and that he had met the victim- thus explaining why she was drawn to his picture in the photo lineup. His alibi for the first attack was that he was babysitting the daughter of Lana Hickman at the time. Hickman, Redding's girlfriend, corroborated his testimony. With respect to the second attack, Redding testified that he had been drinking alcohol with friends approximately seven blocks from the victim's apartment. When he noticed how late it was, he decided to run home along a path that brought him near the victim's apartment. As he was running, a police officer jumped him.⁵

³ *Id.* at 863.

⁴ *Id.*

⁵ *Id.*

7. The jury convicted Redding on all charges and he was sentenced to four life terms. Defendant appealed, and in October 1990, the Delaware Supreme Court affirmed Defendant's conviction and sentence.⁶

8. Thereafter, Defendant filed two motions for postconviction relief. The first, in July 1991, and the second in May 1993. Both motions were denied. The first motion was denied by the Superior Court and the denial was affirmed on appeal.⁷ The second motion was denied by the Superior Court.⁸

9. In June 2002, Redding filed a motion for postconviction DNA testing of two slides containing vaginal material taken from the victim during the investigation of the two attacks. Although the Superior Court denied Defendant's motion,⁹ on appeal, the Delaware Supreme Court reversed and remanded the matter.¹⁰ Following a hearing after the remand, the Superior Court granted Redding's request for DNA testing.¹¹ Redding was represented by counsel, William Deeley and Lisa Schwind, from the Innocence Project, in connection with his motion for DNA testing.

10. By letter dated December 6, 2007, Attorney Schwind wrote to Redding enclosing a copy of the DNA report and advising that the Y-STR testing was completed and yielded no results. Attorney Schwind further advised that there was no remaining material left to be tested in that the entire sample had been consumed.¹²

11. By letter dated January 3, 2008, Attorney Schwind again wrote to Redding advising:

⁶ *Redding v. State*, 1990 WL 168235 (Del. 1990).

⁷ *State v. Redding*, 1992 WL 240346 (Del.Super. 1992), *aff'd*, 1992 WL 426442 (Del. 1993).

⁸ Superior Court Docket No. 34, Superior Court Memorandum Opinion dated November 19, 1993.

⁹ *State v. Redding*, 2002 WL 31411021 (Del.Super.).

¹⁰ *Redding*, 831 A.2d at 868-870.

¹¹ Superior Court Docket No. 52.

¹² Superior Court Docket No. 56, Attorney Schwind's December 6, 2007 letter enclosing DNA report.

I am writing in response to your letters dated December 12, 2007 and December 14, 2007.

Essentially, upon utilizing the Y-STR DNA testing method, the slides yielded no reportable response (NR). This result was due to either insufficient or non-existent male DNA or the sample was excessively degraded.

This is a more sensitive test and would reveal either male skin cells or sperm. The test revealed neither.

Lack of DNA is insufficient for a claim of actual innocence under 11 Del. Code, Section 4504. To support a claim we would need a DNA profile which did not match yours.

Your Innocence Project file has been closed. We will not be assisting you further.

Good luck with your case.¹³

12. By letter dated October 9, 2008, Attorney Schwind informed the Court that the case was closed since the Y-STR testing was completed and yielded no results.¹⁴

13. On August 23, 2010, Redding filed the subject Motion for Postconviction Relief. In the motion, Redding alleges that his counsel was ineffective for abandoning him after receiving the DNA test results and for not pursuing his innocence claim based on the “newly discovered evidence that is favorable to the Defendant.” Redding further contends that the State committed prosecutorial misconduct and violated his due process rights by failing to notify the court of the DNA test results revealing “the truly persuasive evidence of innocence.” Finally, Redding contends that the court also deprived him of his due process rights by failing to rule on the DNA test results that were favorable to the Defendant.

¹³ Superior Court Docket No. 58, Attorney Schwind’s January 3, 2008 letter.

¹⁴ Superior Court Docket No. 57, Attorney Schwind’s October 9, 2008 letter.

14. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.¹⁵ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.¹⁶ Moreover, if it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.¹⁷

15. In this case, Defendant's claim is procedurally barred. Rule 61(i)(1) applies because Defendant filed this motion more than three years after his final order of conviction.¹⁸ Defendant's final order of conviction was in 1990, and this motion filed on August 23, 2010, was filed almost 20 years later, clearly outside the applicable three-year limit. Moreover, in December 2007, Defendant was advised that his DNA testing did not yield any result. In January 2008, Defendant was again advised that as a result of the insufficient DNA test results, his case was being closed. To the extent that the DNA testing issue constituted something new or recently discovered, when defense counsel advised Defendant in December 2007 and again in January 2008 that the DNA test results were insufficient and that the case was being closed, Defendant had one year from that revelation to raise any issues resulting therefrom.¹⁹ Defendant waited over 2 ½ years to file his postconviction relief motion related to that decision. Defendant has failed to

¹⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁶ *Id.*

¹⁷ Super.Ct.Crim.R. 61(d)(4).

¹⁸ Super.Ct.Crim.R. 61(i)(1). If the final order of conviction occurred before July 1, 2005, the motion must be filed within three years. If the final order of conviction occurred on or after July 1, 2005, the motion must be filed within one year. *See*, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005) (amending Super.Ct.Crim.R. 61(i)(1) (May 1, 1996)).

¹⁹ *See*, Super.Ct.Crim.R. 61 (i)(1)

provide any basis for his delay and, consequently, even if his “new” issue had any merit, it is now time barred.

16. In order to overcome the time bar, Defendant must demonstrate a colorable claim of a miscarriage of justice that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.²⁰ Defendant provides no argument in support of a miscarriage of justice and there is no such support in the record. The Court does not find that the interests of justice require it to consider this otherwise procedurally barred claim for relief.

17. In addition, Defendant cannot maintain any ineffective assistance of counsel claims since Defendant’s motion relates to counsel’s conduct during postconviction proceedings. The right to the effective assistance of counsel is inapplicable in the context of postconviction proceedings.²¹

18. Finally, Defendant’s motion should also be denied on the separate and independent basis that it lacks merit. The DNA test results yielded no reportable response. As Attorney Schwind already explained to Defendant in her letter of January 3, 2008, “Lack of DNA is insufficient for a claim of actual innocence under 11 Del. Code, Section 4504. To support a claim we would need a DNA profile which did not match yours.” Indeed, under Delaware law, a court may order a new trial if Defendant’s meets his burden to establish by clear and convincing evidence that no reasonable trier of fact, considering the evidence presented at trial, evidence that was available at trial but was not presented or was excluded, and the [DNA evidence] would have convicted.²²

²⁰ Super.Ct.Crim.R. 61(i)(5)

²¹ *Cabrera v. State*, 2010 WL 3277556, at *1 (Del).

²² 11 Del. C. § 4504(b); *Brookins v. State*, 922 A2d 389, 392-93 (Del. 2007).

19. Because the DNA testing in this case yielded no results, Defendant could not meet his burden of proof. The DNA test results added nothing to further Defendant's claim of actual innocence. Defendant's counsel cannot be faulted for failing to proceed with a hearing that had no basis. In fact, defense counsel was obligated not to pursue Defendant's claim when the DNA test results yielded no reportable response and the continuation of any such claim would therefore be meritless. The prosecutor had no duty to notify the court of the DNA test results since it did not yield any "newly discovery evidence" establishing the "truly persuasive evidence of innocence." The court did not deprive Defendant of his due process by failing to rule on the DNA test results that was "favorable to the Defendant", because the DNA test results were not, in fact, favorable to the Defendant. The DNA test results were meaningless, revealed nothing, and did not further any claim of actual innocence.

20. It is noted that there were doubts as to whether the DNA testing would provide any meaningful result. There was no evidence to suggest that Defendant ejaculated at any time during the first rape much less that he ejaculated in the victim's vagina. The victim testified that she immediately washed herself and changed clothes after Defendant left her home. Consequently, there were doubts that the DNA testing of the vaginal material taken after the first incident could show Defendant's innocence. In the same regard, as to the second incident, the victim testified that Defendant had just pulled down his pants and was trying to put his penis in her vagina when the police broke into the apartment and Defendant ran away. Thus, there was no evidence of either vaginal penetration or ejaculation, although there was evidence of oral penetration. It appeared, therefore, that performance of DNA testing on either or both slides was unlikely to

demonstrate Defendant's "actual innocence."²³ Despite these doubts as to whether DNA would be found, the doubts were resolved in favor of DNA testing.²⁴ The DNA test results yielded no reportable response. This result was due to either insufficient or non-existent male DNA or the sample was excessively degraded. In any event, the DNA test results added nothing to further Defendant's claim of actual innocence.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary

²³ *Redding*, 831 A.2d at 868-69.

²⁴ *Id.*